

**42. 31 Impact Fees.** [73] [87]

**(A) PURPOSE.**

- (1) This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:
  - (a) Promote public health, safety, convenience, welfare, and prosperity;
  - (b) Insure that adequate and appropriate facilities are available;
  - (c) Provide for the harmonious development of the municipality and its environs;
  - (d) Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;
  - (e) Insure the proper arrangement and coordination of streets; and,
  - (f) Insure streets of sufficient width to accommodate existing and prospective traffic.

**(B) AUTHORITY.**

- (1) Impact fees may be assessed to new development to compensate the City of Rochester and the School District for the proportional share of capital facilities generated by new development in the City of Rochester. Any person who seeks a building permit for new development may be required to pay an impact fee in the manner set forth herein.
- (2) The Planning Board may, as a condition of approval of any subdivision, site plan, or change of use, and when consistent with applicable Board regulations, require an applicant to 8/02/2005 pay an impact fee for the applicant's proportional share of off-site improvements to public facilities affected by the development:
- (3) Nothing in this section shall be construed to limit the existing authority of the Planning Board to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the Planning Board's authority to require off-site work to be performed by the applicant, in lieu of paying an impact fee, or the board's authority to impose other types of conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, ordinances or regulations.

(C) **DEFINITIONS.** For the purposes of this chapter, the following terms shall have the meanings indicated:

- (1) **IMPACT FEE** - A fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the City of Rochester, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.
- (2) **NEW DEVELOPMENT** - An activity that results in:
  - (a) The creation of a new dwelling unit or units; or
  - (b) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units; or
  - (c) Construction resulting in a new non-residential building or a net increase in the floor area of any non-residential building; or
  - (d) The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessments.

New development shall not include the replacement of an existing mobile home or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on public capital facilities.

(D) **ASSESSMENT METHODOLOGY**

- (1) **Proportionality:** The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The Planning Board may prepare, adopt, or amend studies or reports that are consistent with the above standards, and which define a methodology for impact fee assessment for public capital facilities, and impact fee assessment schedules therefore.
- (2) **Existing Deficiencies:** Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

(E) **ADMINISTRATION**

- (1) **Accounting**: In accord with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the City's general fund, may be spent upon order of the City Council, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet. In the event that bonds or similar debt instruments have been or will be issued by the City of Rochester or the Rochester School District for the funding of capital improvements that are the subject of impact fee assessment, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.
- (2) **Assessment**: All impact fees imposed pursuant to this section shall be assessed at the time of planning board approval of a subdivision plan or site plan. When no planning board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, as determined by the Building Inspector. Impact fees shall be intended to reflect the effect of development upon municipal and/or school facilities at the time of the issuance of the building permit.
- (3) **Security**: In the interim between assessment and collection, the Building Inspector may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed impact fees.
- (4) **Collection**: Impact fees shall be collected as a condition for the issuance of a certificate of occupancy; provided, however, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where the City has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the City may advance the time of collection of the impact fee to the issuance of a building permit. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this section shall prevent the Building Inspector, with the approval of the Planning Board, and the assessed party from establishing an alternate, mutually acceptable schedule of payment.
- (5) **Refund of Fees Paid**: The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
  - (a) When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
  - (b) When the City of Rochester, or in the case of school impact fees, the Rochester School District, has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate their proportionate non-impact fee share of related capital improvement costs.

- (F) **APPEALS:** A party aggrieved by a decision made by the Building Inspector regarding the assessment or collection of impact fees authorized by this Section may appeal such decision to the Planning Board.

In accord with RSA 676:5, III, appeals of the decision of the Planning Board in administering this ordinance may be made to Superior Court, as provided in RSA 676:5, III and RSA 677:15, as amended.

- (G) **WAIVERS:** The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

- (1) An applicant may request a full or partial waiver of school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years.
- (2) A person may request a full or partial waiver of impact fees for construction within a subdivision or site plan approved by the Planning Board prior to the effective date of this ordinance. Prior to granting such a waiver, the Planning Board must find that the proposed construction is entitled to the four year exemption provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, building and construction has not yet occurred in the phase in which construction is proposed.
- (3) The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the City Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. The applicant shall pay all costs incurred by the City for the review of such proposal, including consultant and counsel fees.